

In 1844, after the death of Mrs. Bevans, a petition was filed in the name of the Conners, her children by a second marriage, claiming to be equally entitled with the Bevans to the estate of H. M. Ogle, upon which the Chancellor passed an order, November 20th, 1844, deciding that, "according to the terms of the bequest of the testatrix, H. M. Ogle, deceased, her daughter Mary and her children, as well those of her second as of her first marriage, are entitled to participate in nothing more than the rents, profits, interest and dividends arising from the property bequeathed during the lifetime of Mary, giving to each of her children a due proportion thereof, for the purposes of maintenance and education only during its minority, from the time of its birth or death of the testatrix, until its death or the marriage of a female, or the death of its mother, and for this purpose all payments of such profits to the mother, or by the said trustee for such maintenance and education, are to be regarded as proper applications thereof. But as it appears to have been the intention of the testatrix that no part of the capital or principal of the property bequeathed should be so applied to the use of the said Mary or her children, the Auditor will charge each of the children with so much of said principal as he or she may have received, and award to him or her nothing until the other children may have awarded to them an equal amount from the estate now to be distributed. So much of the rents, profits, interest or dividends of the estate, as accrued and became demandable and payable to the said Mary, for the use of herself and her infant children, during their lifetime, and which were not paid to her, must be awarded to her husband, the said James Conner. Subject, to these directions, a distribution of the whole estate is now to be made among the children of the said Mary, who were alive at the time of her death, and of such of them, if any, who may have died before that time leaving issue."

The first question to be considered in this case is, in what relation did Benjamin Ogle stand to the children of Mrs. Bevans in the receipt and distribution of the real and personal estate of H. M. Ogle? He was, by her will, appointed one of four trus-